Supreme Court of the United States

OCTOBER TERM, 1946:

No. 583.

PIHLIP B. FLEMING, Temporary Controls Administrator,
Petitioner.

MOHAWK WRECKING AND LUMBER COMPANA a Partnership, and Harry Smith.

ON MOTION OF RESPONDENTS TO VACATE ORDER OF THIS COURT PERMITTING SUBSTITUTION OF TEMPORARY CONTROLS ADMINISTRATOR FOR PRICE ADMINISTRATOR AS PETITIONER.

BRIEF OF SINGER SEWING MACHINE COMPANY, AMICUS CURIAE.

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Supreme Court of the United States

Остовев Тевм, 1946.

No. 583.

PHILIP B. FLEMING, Temporary Controls
Administrator, Petitioner

v.

Mohawk Wrecking and Lumber Company, a Partnership, and Harry Smith.

On Motion of Respondents to Vacate Order of This Court
Permitting Substitution of Temporary Controls
Administrator for Price Administrator
as Petitioner.

BRIEF OF SINGER SEWING MACHINE COMPANY, AMICUS CURIAE.

This brief is submitted on behalf of Singer Sewing Machine Company, a New Jersey corporation, amicus curiae, consent thereto having been obtained from petitioner and respondents. It is submitted in connection with the motion of the respondents to vacate an order of this court substituting Philip B. Fleming, Temporary Controls Administrator, for Paul A. Porter as petitioner, and it relates only to the following issue:

Were the functions of the Price Administrator of the Office of Price Administration validly transferred to the Administrator of the Office of Temporary Controls by Executive Order 98091

If the functions of the Price Administrator were not validly transferred to the Administrator of the Office of Temporary Controls, then, of course, Philip B. Fleming was not entitled to be substituted as petitioner in this proceeding.

SUMMARY OF ARGUMENT.

- I. The office and functions of the Price Administrator were created by Congress in the Price Control Act and the President had no authority to transfer those functions in the absence of a grant of such authority to him by Congress.
- The transfer by Executive Order 9809 of the functions of the Price Administrator to the Temporary Controls Administrator was not authorized by the Price Control Act.
 - A. The transfer of the functions of the Price Administrator to the Temporary Controls Administrator was not a transfer of functions "with respect to a particular commodity or commodities".

[•] The interest of Singer Sewing Machine Company in this proceeding arises from the fact that it is the defendant in an action (in the District Court of the United States for the Western District of Missouri entitled "Paul A. Porter, Price Administrator, Office of Price Administration, v. Singer Sewing Machine Company. Civil No. 4021") in which Philip B. Fleming, Temporary Controls Administrator, has moved to be substituted as plaintiff. Singer Sewing Machine Company has opposed that motion upon the ground, inter alia, that the functions of the Price Administrator were not validly transferred to the Temporary Controls Administrator by Executive Order 9809.

- B. The transfer of the functions of the Price Administrator to the Temporary Controls Administrator was not a transfer of functions to a department or agency "having other functions relating to such commodity or commodities."
- C. The blanket transfer of all powers and functions of the Office of Price Administration terminating the existence of that Office was not authorized by Section 201(b).
- III. The transfer by Executive Order 9809sof the functions of the Price Administrator to the Temporary Controls Administrator was not authorized by Title I of the First War Powers Act.
 - A. The authority of the President under Title I of the First War Powers Act to consolidate and transfer the functions of agencies was limited to agencies in existence at the date of enactment thereof and therefore did not extend to the Office of Price Administration which was subsequently created.
 - B. The consolidation of the Office of Price Administration and the transfer of its functions to the Office of Temporary Controls was not authorized by the First War Powers Act because such consolidation and transfer was not a matter "relating to the conduct of the present war".
 - C. In any event, the Price Control Act placed the functions of the Price Administrator outside the purview of the First War Powers Act.

ARGUMENT.

POINT 1.

The office and functions of the Price Administrator were created by Congress in the Price Control Act and the President had no authority to transfer those functions in the absence of a grant of such authority to him by Congress.

The Emergency Price Control Act of 1942 (50 U.S. C. A. App. Sec. 901, et seq.) was passed by Congress in the valid exercise of the war powers delegated to Congress in the Constitution (U. S. Constitution, Article 1, Section 8, Clause 11; Yakus v. U. S., 321 U. S. 414, 88 L. Ed. 834; Bowles v. Willingham, 321 U. S. 503, 88 L. Ed. 892). Act provides for its administration by an agency created by the Act, the Office of Price Administration, and provides that there shall be at the head of that agency an officer, the Price Administrator, whose position and office are also created by the Act. The Act further provides that the Price Administrator shall be appointed by the President by and with the advice and consent of the Senate. The major part of the statute is devoted to a description of the functions which are conferred upon the Price Administrator (Sections 2, 5, 6, 201(c) and (d), 202, 203, 205 and 301; 50 U. S. C. A. App. Sections 901, 905, 906, 921(c), 921(d), 922, 923, 925 and 931). These sections describe in detail the powers and duties, in a word, the functions, of the

[•] Section 201(a) of the Act provides as follows:

[&]quot;Sec. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the 'Administrator'). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$12,000 per annum."

Price Administrator, and provide for the exercise of those functions by the Price Administrator, the officer appointed and qualified in accordance with the provisions of Section 201(a).

As both the office and the functions of the Price Administrator were created by Congress, and as Congress has validly conferred those functions upon the Price Administrator alone, any transfer of those functions by the President to another administrative officer in the absence of Congressional authority to do so would be an attempt by the executive to alter or repeal the provisions of the Price Control Act and would be unconstitutional and void. U. S. Constitution, Article 1, Section 1; Campbell v. Galeno Chemical Co., 281 U. S. 599, 74 L. Ed. 1063; International Railway Co. v. Davidson, 257 U. S. 506, 66 L. Ed. 341; U. S. v. Eaton, 144 U. S. 677, 36 L. Ed. 591; U. S. v. United Verde Copper Co., 196 U. S. 207, 49 L. Ed. 449.

The Congressional statutes relied upon as providing authority for the transfer of the Price Administrator's functions by Executive Order 9809° are the Price Control Act itself and Title I of the First War Powers Act (50 U. S. C. A. App. Sections 601-605). Neither statute authorizes such transfer. These statutes will be discussed in Points II and III hereof, respectively. At this point, however, it may be pointed out that the present state of the authorities on the issue of Philip B. Fleming's right to substitution is that in every reported case in which the issue has been raised and argued, the court has held that Philip B. Fleming was not entitled to be substituted. Porter v. Wilson, U. S. D. C. Ore., Januarry 25, 1947 [C. C. H.

^{*} The applicable provisions of Executive Order 9809 are set out in Appendix "A" hereof.

War Law Service, Price Control, Par. 52622]; Porter v. Hirahara, U. S. D. C. Hawaii, January 29, 1947 [C. C. H. War Law Service, Price Control, Par. 52628]; Porter v. Ryan, U. S. D. C. Ore., January 8, 1947, 15 Law Week 2390; Bowles v. Johnson, Cal. Mun. Ct., January 30, 1947 [C. C. H. War Law Service, Price Control, Par. 52625]. We are advised that there are three unreported cases, in one of which, Fleming v. Taylor, U. S. D. C. Tex., Feb. 21, 1947, Civil No. 2303, it was held that Philip B. Fleming was not entitled to be substituted, and in two of which, Porter v. Kay Ferer Inc., U. S. D. C. Mo., Feb. 26, 1947, Civil No. 3946 (no opinion) and Porter v. Bowers, U. S. D. C. Mo., Mar. 20, 1947, Civil No. 4144, it was held he was entitled to be substituted.

POINT II.

The transfer by Executive Order 9809 of the functions of the Price Administrator to the Temporary Controls Administrator was not authorized by the Price Control Act.

The only provisions of the Price Control Act which authorize any transfer of any function conferred by that Act upon the Price Administrator are contained in Section 201(b). That section, covering the entire field of transfers of functions of the Price Administrator, provides as follows:

"(b) The President is authorized to transfer any of the powers and functions conferred by this Act upon the Office of Price Administration with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities and to transfer to the Office of Price Administration any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities; but, notwithstanding any provision of this or any other law, no powers or functions conferred by law upon the Secretary of Agriculture shall be transferred to the Office of Price Administration or to the Administrator, and no powers or functions conferred by law upon any other department or agency of the Government with respect to any agricultural commodity, except powers and functions relating to priorities or rationing, shall be so transferred." (Italics added.)

The authority of the President to transfer the powers and functions of the Price Administrator thus is expressly limited by Section 201(b) to transfers of powers and functions "with respect to a particular commodity or commodities" which are made to a department or agency "having other functions relating to such commodity or commodities". The functions transferred by Executive Order 9809 were not functions "with respect to a particular commodity or commodities". The agency to which they were transferred was not one "having other functions relating to" the same commodity or commodities to which the functions transferred related. Furthermore, in no circumstances was there authority to make a blanket transfer of all powers and functions of the Office of Price Administration terminating the existence of that office. These points we will discuss in the order mentioned.

A. The Transfer of the Functions of the Price Administrator to the Temporary Controls Administrator Was Not a Transfer of Functions "With Respect to a Particular Commodity or Commodities".

It is apparent on the face of Executive Order 9809 that the powers and functions attempted to be transferred were not those relating to a particular commodity or commodities. No commodity was named or described or even referred to in the Order and it purported to transfer all functions of the Price Administrator. The functions transferred were not even limited to functions relating to commodities then subject to price control, but included even those relating to commodities no longer subject to control. In other words, the Order purported to transfer all functions relating to every commodity which at any time ever had been subject to any price control. The Order contains the following provision:

"The functions hereby vested in the Administrator shall be deemed to include the authority to maintain in his own name civil proceedings relating to matters heretofore under the jurisdiction of the price administrator (including any such proceedings now pending.)"

The Price Administrator's functions included the bringing and maintaining of injunction suits under Section 205(a) and treble damage actions under Section 205(e) relating to any commodity as to which violations of the Act occurred during the time that commodity was subject to price control. By this provision alone, without reference to those which by their terms specifically transfer all functions, the Order transfers functions relating to every commodity which at any time ever had been subject to any control, that is, functions relating to the maintaining of suits,

whether injunction or treble damage suits, for violations of regulations relating to each and every such commodity.

Thus by its terms Executive Order 9809 sought to transfer functions of the Price Administrator which related to the full range of the almost innumerable commodities formerly subject to the Administrator's price regulations. The transfer of functions of the Price Administrator relating to such thousands of unnumbered, undesignated commodities not particularized anywhere in the Order cannot be a scribed as a transfer of functions "with respect to a particular commodity or commodities."

B. The Transfer of the Functions of the Price Administrator to the Temporary Controls Administrator was not a Transfer of Functions to a Department or Agency "Having Other Functions Relating to Such Commodity or Commodities."

Not only was the attempted transfer not a transfer of functions relating to a particular commodity or commodities, but, in addition, it was not a transfer of functions to a department or agency "having other functions relating to such commodity or commodities". Apart from those functions of the Price Administrator which the Order purported to transfer to it, the Office of Temporary Controls did not have or acquire functions relating to each of the thousands of different commodities formerly subject to price control.

C. The Blanket Transfer of All Powers and Functions of the Office of Price Administration Terminating the Existence of that Office Was Not Authorized by Section 201(b).

The attempted transfer is invalid because it attempts to transfer all functions of the Office of Price Administration. If Executive Order 9809 were effective in accordance with its terms it would abolish the Office of Price Administration and the position of Price Administrator. This is shown by the provision for the "consolidation" of the Office of Price Administration in the Office of Temporary Controls and for the "vesting" of the Price Administrator's functions in the Temporary Controls Administrator. These euphemistic terms do not conceal the fact that the effect of the Order is to eliminate entirely the Office of Price Administration, an agency and an office created by Congress to administer the Price Control Act. Authority to accomplish such result is clearly negatived by Section That section contemplates that no transfer of functions of the Price Administrator made thereunder would completely divest him of all of his functions or destroy his position and his agency. The section authorizes a transfer of "any of the powers or functions of the Office of Price Administration. . . . " If Congress had intended to authorize a transfer of all of the Price Administrator's functions, it would have so provided, but such a blanket transfer was not contemplated, as shown by the requirement that a transfer be of functions relating to a particular commodity or commodities and that the transfer be made to an agency having functions relating to such commodity or commodities. A power to transfer which is so limited and so circumscribed is inconsistent with a power to make a complete transfer of all functions of the Price Administrator.

The intent and understanding of the Congress, as disclosed by Section 201(b), that the President was not authorized to make such a blanket transfer is again shown in the Price Control Extension Act of 1946, which amended the

Price Control Act by adding thereto a new Section 1A(c)(2) providing as follows:

"(2) On or before April 1, 127, the President shall report to the Congress what, if any commodities or classes of commodities, including housing accommodations, are in such critically short supply as to necessitate in his judgment, the continuance of the powers granted by this Act as to them after June 30, 1947, together with his recommendations as to established departments or agencies of the Government (other than the Office of Price Administration) which should be charged with the administration of such powers."

This section shows that Congress intended that the Office of Price Administration should continue as the agency administering the Price Control Act until the termination date and it effectively negatives any intention to authorize the President alone to transfer all functions of the Price Administrator.

Section 201(b) carefully and precisely defines and delineates the power of the President to transfer the Price Administrator's functions. That power is limited to transfers of functions with respect to a particular commodity or commodities which are made to agencies having other functions relating to such commodity or commodities. There are also precise provisions which enumerate the instances in which a transfer of functions to the Price Administrator is authorized. Congress thereby completely covered the field of authorized transfers of functions from or to the Price Administrator and excluded the exercise by the President of any power to transfer not enumerated in Section 201(b).

It was logical and consistent for Congress to permit a transfer only in the specified instances enumerated in Section 201(b). The powers and functions conferred upon the Price Administrator by the Price Control Act made him one of the most powerful Administrators in the Government and the very nature of price control required that he be given broad discretionary powers in order to accomplish the purposes of the Act. Mindful of the tremendous power to affect the economy of the country and the welfare of its citizens which was conferred upon the Price Administrator by the Price Control Act and mindful of the equally tremendous breadth of the discretion conferred upon him. . Congress provided that the Administrator was to be appointed by and with the advice and consent of the Senate. In dealing with the transfer provisions, Congress of course was aware that to the extent a transfer of functions was authorized such a transfer might be made to an officer not subject to Senate confirmation. Undoubtedly it was for this reason that the transfer provisions (which follow in the statute immediately after the requirement that the Administrator's appointment be confirmed by the Senate) were drawn so as to authorize only those transfers specifically enumerated in Section 201(b). Any other construction would render nugatory the requirement that the Administrator's appointment must be confirmed by the Senate, for unless the transfer authority is limited to the instances enumerated in the statute, it is then possible to make a transfer of all of the Administrator's functions to an officer not confirmed by the Senate. Such a construction would be a perversion of the evident Congressional purposes in requiring Senate confirmation.

POINT III.

The transfer by Executive Order 9809 of the functions of the Price Administrator to the Temporary Controls Administrator was not authorized by Title I of the First War Powers Act.

The President states in Executive Order 9809 that his power to accomplish the transfer of functions therein attempted derives in part from Title I of the First War Powers Act (50 U. S. C. A. App. Sections 601-605). Title I of the First War Powers Act provides as follows:

TITLE I—COORDINATION OF EXECUTIVE BUREAUS IN THE INTEREST OF THE MORE EFFICIENT CONCENTRATION OF THE GOVERNMENT.

"§601. Coordination of executive bureaus, offices, etc., by President for national defense and to prosecute the war; issuance of regulations

"For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary, . . . Provided further. That the authority by this title granted shall

be exercised only in matters relating to the conduct of the present war."

"\$602. Same; consolidation of offices; transfer of duties, personnel and records.

In carrying out the purposes of this title the President is authorized to utilize, co-ordinate, or consolidate any executive or administrative commissions, bureaus, agencies, governmental corporations, offices, or officers now existing by law, to transfer any duties or powers from one existing department, commission, bureau, agency, governmental corporation, office, or officer to another, to transfer the personnel thereof or any part of it either by detail or assignment, together with the whole or any part of the records and public property belonging thereto."

• "\$604. Presidential recommendation to Congress for elimination of certain bureaus, offices, etc."

Should the President, in redistributing the functions among the executive agencies as provided in this title conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper."

These provisions of the First War Powers Act did not authorize the transfer by Executive Order 9809 of the Price Administrator's functions to the Temporary Controls Administrator because (1) the President's authority to consolidate agencies and to transfer functions is limited to agencies in existence at the time the First War Powers Act was enacted, and therefore that authority did not extend to the Office of Price Administration, which was subsequently created, (2) the consolidation of the Office of Price Administration and the transfer of its functions to the Office of Temporary Controls was not a "matter relation."

ing to the conduct of the present war"; and (3) in any event, the Price Control Act placed the functions of the Price Administrator outside the purview of the First War Powers Act which therefore has no application to the attempted transfer.

A. The Authority of the President under Title I of the First War Powers Act to Consolidate and Transfer the Functions of Agencies was Limited to Agencies in Existence at the Date of Enactment Thereof and Therefore did not Extend to the Office of Price Administration Which was Subsequently Created.

Title I of the First War Powers Act must be read and interpreted as a whole so that all of its provisions may be given effect without conflict or inconsistency. Section 1 states the purposes of the Title and the general authority granted to the President thereunder to make redistribution of functions among executive agencies. Section 2 then prescribes and defines precisely the specific and sole authority which is granted to the President to effectuate such purposes and authority. He is authorized to "utilize, coordinate or consolidate" agencies "now existing by law" and to "transfer any duties or powers from one existing 1... agency . . . "to another." Section 4 provides that should the President, in redistributing functions among executive agencies, conclude that any bureau should be abolished and it or their duties and functions conferred upon some other department or bureau or eliminated entirely, he shall report his conclusions to Congress with such recommendations as he may deem proper. In both sections there are explicit limitations upon the power of the President. In Section 2 his power to utilize, coordinate or consolidate agencies and to transfer their functions is limited to those agencies then existing by law. In Section 4 his power with respect to the abolition of agencies is limited to the power to recommend abolition to Congress.

The First War Powers Act was enacted December 18, 1941 and the Office of Price Administration was not then in existence, it having been created thereafter by the Emergency Price Control Act of 1942. Executive Order 9809 by its terms purports to "consolidate" the Office of Price Administration into a new agency and to transfer all duties, powers and functions of the Price Administrator to such new agency and, accordingly, on its face, is in direct contravention of the limitations imposed on the President's authority by the First War Powers Act.

There was logic of course in limiting the power to consolidate or to transfer functions of agencies to those agencies in existence at the time of the enactment of the statute. There was no necessity of legislating then as to the power of the President to consolidate or transfer the functions of agencies created by Congress subsequent thereto. In later enactments creating such agencies Congress could make any provision it desired for their consolidation or the transfer of their functions. And this very course was followed by Congress in later enacting the Price Control Act which, as we pointed out in Point II, contained specific provisions in Section 201 (b) thereof which conferred upon the President a limited power to transfer functions of the Office of Price Administration.

Recognition that the President's authority to consolidate agencies or to transfer the functions of agencies under the First. War Powers Act was limited to agencies in existence at the date of enactment thereof appears from the Executive Orders issued by the President under that Act which consolidated or transferred the functions of agencies. Without exception, every such Executive Order consolidated or transferred functions of agencies which were (1) created prior to the enactment of the First War Powers Act or (2) if created subsequent thereto, were cre-

ated solely by Executive Order of the President or by some lesser administrative official. (Of course, the President needed and was exercising none of the powers conferred by the First War Powers Act when he consolidated or transferred the functions of agencies created by his own executive order or by order of his subordinates. Such agencies were his own creatures; as such he had the power to destroy them, to consolidate them, or to transfer their functions as he pleased.) We have compiled in Appendix B hereto all Executive Orders of the President purporting to have been issued under authority of the First War Powers Act which consolidated or transferred functions of agencies. together with the names of the agencies and the date and manner of their creation. Every one of the agencies involved in these Executive Orders was an agency which: was created prior to the enactment of the First War Powers Act or, if created subsequent thereto, was created solely by Executive Order of the President or by order of his subordinates. The fact that the President has never before attempted under the provisions of the First War Powers Act to consolidate or transfer functions of agencies created by Congress subsequent to the enactment of said Act is persuasive evidence that the President has heretofore always considered that the statute, when it provides in Section 2 that the power granted to the President to consolidate and transfer the functions of agencies is limited to agencies in existence at the date of enactment of the First War Powers Act, means exactly what it says.

California Lima Bean Growers Ass'n v. Bowles, 150 F.

(2) 984 (Em. Ct. App. 1945), has been relied upon and cited repeatedly by Philip B. Fleming as a holding that the First War Powers Act granted the President power to transfer functions of an agency created after the date of the enactment of the Act. That case stands for no such

proposition. It dealt only with a transfer of subsequently created functions of an agency, the Department of Agriculture, which existed when the First War Powers Act was enacted. There is no question but that the First War Powers Act applies to subsequently created functions of an agency which existed at the date of the enactment of the Act. No contention is made to the contrary. That, however, does not settle the question, and in fact has no relation to the question, as to whether functions of a subsequently created agency can be transferred. The First War Powers Act by express terms provided that it applied to functions of agencies then existing.

B. The Consolidation of the Office of Price Administration and the transfer of its Functions to the Office of Temporary Controls was not Authorized by the First War Powers Act Because such Consolidation and Transfer Was Not a Matter "Relating to the Conduct of the Present War".

The authority conferred upon the President by Title I of the First War Powers Act is expressly made subject to the following proviso:

"Provided, further, that the authority by this title granted shall be exercised only in matters relating to the conduct of the present war." (Section 1).

That proviso is not a mere time limitation which can be satisfied by a transfer consummated within a prescribed period. On the contrary, it imposes a substantive requirement, namely, that whenever the authority may be exercised it must be exercised only "in matters relating to the conduct of the present war." Thus, exercise of the authority during the period of hostilities, or even during the period while the war was being conducted, would not satisfy the

requirement. The requirement could be satisfied only by the exercise of the authority in a matter relating to the conduct of the war.

The phrase "conduct of the present war" denotes action, which distinguishes it from time limitations which relate to the mere existence of a "state of war." "Conduct" of the war denotes the actual carrying on or prosecution of the war, the taking of affirmative action with respect to the war. Webster defines "conduct" as follows:

"Act or manner of carrying on, directing, or managing, as a business management; direction. Christianity has humanized the *conduct* of war."

And "war" is defined as follows:

"The state or fact of exerting violence or force against another, not only against a state or other politically organized body; especially a contest by force between two or more nations or states, carried on for any purpose; armed conflict of sovereign powers; declared and open hostilities." (Webster New International Dictionary, 2d Ed, Unabridged).

Thus, "conduct of the present war" means the carrying on or directing of an armed conflict between nations. The attempted transfer of the Price Administrator's functions was not a matter relating to the "conduct of the present war," for at the time the transfer was attempted such of the price control functions as remained in existence had no relation to the carrying on or directing of an armed conflict between nations. Prior to December 12, 1946, the policy of the government had become a policy of price decontrol, rather than price control. At that time the func-

[•] See the Price Administrator's Supplementary Order 193 (Fed. Reg. Nov. 14, 1946, p. 13464) which exempts all commodities from price control except sugar, rice and rents; see also Statement of the President directing the abandonment of price controls except over sugar, rice and rents, C. C. H. War Law Service, Price Control, 2 Par. 41, 371.

tions of the Price Administrator had become functions of liquidating and winding up the remnants of price control. In these circumstances, the transfer of the functions of the Price Administrator was not a matter relating to the carrying on of an armed conflict between nations, a conflict which had terminated more than a year prior thereto. The Order itself recognizes this fact, for it states that the Order is issued "for the purpose of further effectuating the transition from war to peace and in the interest of the internal management of the government."

C. In any event, the Price Control Act Placed the Functions of the Price Administrator Outside the Purview of the First War Powers Act.

* Even if Title I of the First War Powers Act had authorized transfers of functions of agencies subsequently created. such authority would not extend to the functions of the Price Administrator, for the authority to transfer those functions was prescribed by the Price Control Act. power the Congress had given to the President in general terms in the First War Powers Act was subject to such exceptions, restrictions or limitations which Congress might provide in later statutes. Congress in Section 201(b) of the Price Control Act specifically covered the subject of transfers of functions to or from the Price Administrator and thereby fixed the limits of the President's power to transfer the Price Administrator's functions. In so doing Congress, as shown above in Point IL, C (page 11), limited and restricted the President's powers when applied to transfers of the Price Administrator's functions to those transfers authorized by Section 201(b). When broad general statutory provisions cover a subject matter covered by specific statutory provisions on the same subject matter the specific provisions are given effect in accordance with their terms and are interpreted as creating an exception to the general provisions. Missouri v. Ross (1936); 299 U. S. 72, 81 L. Ed. 46; McKee v. U. S., 164 U. S. 287, 41 L. Ed. 437; Townsend v. Little (1883) 109 U. S. 504, 27 L. Ed. 1012; Durousseau v. U. S., 6 Cranch 308, 3 L. Ed. 232; U. S. v. Hess, (C. C. A. 8, 1934) 71 F. (2d) 78; Jackson v. Chi. R. I. & P. Ry. Co. (1910) 178 Fed. 431. This rule of construction is applicable even if the specific provisions are contained in a statute passed prior to the statute containing the general provisions. A fortiori, the rule has its strongest and most imperative application when, as here, the specific provisions are contained in a statute passed subsequently to the one containing the general provisions.

Conclusion.

The transfer by Executive Order 9809 of the functions of the Price Administrator to the Temporary Controls Administrator was not authorized by Congress.

Respectfully submitted,

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Dated: March 27, 1947.

APPENDIX "A".

APPLICABLE PROVISIONS OF EXECUTIVE ORDER 9809, 11 FED. REG. 14281

'Providing for the Disposition of Certain War Agencies

By virtue of the authority vested in me by the Constitution and Statutes, including Title I of the First War Powers Act, 1941, Title III of the Second War Powers Act, 1942, Section 201(B) of the Emergency Price Control Act of 1942, as amended, and Section 2 of the Stabilization Act of 1942, and as President of the United States, it is hereby ordered, for the purpose of further effectuating the transition from war to peace and in the interest of the internal management of the government, as follows:

- 1. Except as otherwise provided in this order, the following agencies and their functions are consolidated to form one agency in the Office for Emergency Management of the Executive Office of the President, which shall be known as the Office of Temporary Controls, namely: the Office of War Mobilization and Reconversion, the Office of Economic Stabilization, the Office of Price Administration, and the Civilian Production Administration. Consistent with applicable law, the Office of Temporary Controls shall be organized and its functions shall be administered in such manner as the head thereof may deem desirable.
- 2. There shall be at the head of the Office of Temporary Controls a Temporary Controls Administrator, hereafter referred to as the Administrator, who shall be appointed by the President and who shall receive a salary at the rate of \$12,000 per annum unless the congress shall otherwise provide. Except as otherwise provided in this order, the functions of the Director of War Mobilization and Reconversion, the Economic Stabilization Director, the Price

Administrator, and the Civilian Production Administrator, including such functions of the President as are now administered by the said officers, are vested in the Administrator. The functions hereby vested in the Administrator shall be deemed to include the authority to maintain in his own name civil proceedings relating to matters heretofore under the jurisdiction of the price administrator (including any such proceedings now pending) . . .".

APPENDIX "B".

EXECUTIVE ORDERS PURPORTING TO HAVE BEEN ISSUED UNDER AUTHORITY OF THE FIRST WAR POWERS ACT WHICH CONSOLIDATED EXECUTIVE OR ADMINISTRATIVE AGENCIES OR TRANSFERRED THE FUNCTIONS THEREOF.

1. Executive Order 9070 of February 24, 1942, consolidates the following agencies to form the National Housing Agency:

Agency	Date of Creation	Manner of Creation
Federal Housing Adminis- tration	1934	48 Stat. 1246.
Federal Home Loan Bank Board	1932	47 Stat. 736.
Home Owners Loan Corporation	1933	48 Stat. 128.
Federal Savings and Loan Insurance Corporation	1934	48 Stat. 1256.
United States Housing Authority	1937	50 Stat. 889.
Defense Homes Corporation	Oct. 18, 1940	Incorporated pursuant to letter from President to Secretary of Treasury.
Division of Defense Housing Coordination	Jan. 11, 1941	Executive Order 8632.
Coordinator of Defense Housing	1940	By advisory Commission to Counsel of National Defense.
7	* *	

2. Executive Order 9071 of February 24, 1942, transfers to the Department of Commerce all functions of the following agency:

Federal Loan Agency....... Apr. 25, 1939 Reorganization Plan I, pursuant to Reorganization Act of 1939.

3. Executive Order 9082 transfers functions among various branches of the following agency:

Army of the United States (War Department) Aug. 7; 1789 1 Stat. 49.

4. Executive Order 9083 of February 28, 1942, transfers to the Bureau of Customs and to the United States Coast Guard functions of the following agencies:

Agency Bureau of Marine Inspec-	Date o	f Creation	Manner of Creation	
tion and Navigation	June	30, 1932	47 Stat. 415 as amended by 49 Stat. 1380.	y
Bureau of Customs	Mar.	3, 1927	44 Stat. 1381.	
U.S. Maritime Commission	June	29, 1936	49 Stat. 1985.	

5. Executive Order 9126 of April 4, 1942, transfers to the Chief of Naval Operations the duties and functions of the following agencies:

6. Executive Order 9142 of April 21, 1942, transfers to the Alien Property Custodian certain functions of the following agency:

Department of Justice....... June 22, 1870 1 Stat. 92; 16 Stat. 162.

7. Executive Order 9182 of June 13, 1932 consolidates the following agencies or functions thereof to form the O. W. I.:

Office of Facts and Figures... Oct. 24, 1941 Executive Order 8922. Office of Government Re-Sept. 8, 1939 Executive Order 8248. Coordinator of Information July 11, 1941 Presidential Order. Division of Information of the Office for Emergency Feb. 28, 1941 Letter of President to Management Liaison Officer, Office for Emergency Management.

 Executive Order 9198 of July 11, 1942 transfers to the Administrator of War Shipping Administration functions transferred to the following agency by paragraph 5 of Executive Order 9083 of February 28, 1942 (infra):

U. S. Coast Guard...... Jan: 28, 1915 38 Stat. 800.

9. Executive Order 9232 of August 20, 1942, transfers to the Bureau of the Census, Department of Commerce, the following agency and its functions:

Sample Surveys Section of the Work Projects Administration

May 6, 1935 Executive Order 7034 under authority of 49 Stat.

				1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Executive Order 9245 of Sep the Interior the functions,	tember powers	16, and	1942, t	ransfers to the Secretary of of the following office:
U. S. High Commissioner to the Philippine Islands	Jan.			Manner of Creation 47 Stat. 765; 48 Stat. 460.
power Commission in the C	office fo	r E	nergeno	y Management in the Exec-
U. S. Employment Service	July	1,	1939	Reorganization Plan I, Part 2, Secs. 201 and 203.
National Youth Administra				
tion	June	26,	1935	Executive Order 7086, under authority of 78 Stat.
.,	0	•		115.
Apprenticeship Training Service, in the Office of				
the Federal Security Administrator	Aug.	16,	1937	50 Stat. 664.
Federal Security Adminis- trator	Apr.	25,	1939	Reorganization Plan I.
				consolidates the following
War Production Board	Jan.	16,	1942	Executive Order 9024.
Agricultural Conservation and Adjustment Admin-				
istration	Feb.	23,	1942	Executive Order 9069.
Farm Credit Administra-				
tion	July	17,	1916	39 Stat. 360, as amended by
				42 Stat. 1454; Executive Order 6084 of March 27,
	- 17			1933.
Farm Security Administra-			1175	
tion	Apr.	30,	1935	Executive Order 7027, pursuant to 49 Stat. 115;
A The state of the	• •			present name adopted by
				Secretary of Agricul- ture's Memorandum 732 of September 1, 1937.
Division of Form Manage	G			or september, 1, 1991.
ment and Costs of the	0 0	d)		
Bureau of Agricultural	May	11	1999	42 Stat 532
Economics	May	,	1022	, stat. 002.
	U. S. High Commissioner to the Philippine Islands Executive Order 9247 of Sepower Commission in the Outive Office of the Presider U. S. Employment Service National Youth Administration Apprenticeship Training Service, in the Office of the Federal Security Administrator Federal Security Administrator Executive Order 9280 of I agencies or transfers function and Adjustment Administration Farm Credit Administration Farm Credit Administration	Agency U. S. High Commissioner to the Philippine Islands Executive Order 9247 of September power Commission in the Office for utive Office of the President the fully of the President the fully of the President the fully of the Federal Security Administrator	Agency Date of Cr U. S. High Commissioner to the Philippine Islands	U. S. High Commissioner to the Philippine Islands

Agency	Date of Creatie	on Manner of Creation
Office of Agricultural War Relations	May 5, 194	11 Letter of the President.
Agricultural Marketing Administration	Feb. 23, 194	42 Executive Order 9069.
Sugar Agency of the Agri- cultural Conservation and Adjustment Adminis-		
tration	May 12, 193	33 48 Stat. 31, as amended by 50 Stat. 903.
Bureau of Animal Industry	May 29, 188	84 23 Stat. 31.
3 Executive Order 9287 of De	scombor 94 194	2 transfers to the Secretary of

13. Executive Order 9287 of December 24, 1942, transfers to the Secretary of the Interior certain functions of the following agency:

Council of National Defense 1916 · 39 Stat. 649.

15. Executive Order 9310 of March 6 1943, transfers functions of the following agency to the Department of Agriculture:

Office of Defense, Health and Welfare Services...... Sept. 3, 1941 Executive Order 8890.

16. Executive Order 9315 of March 15, 1943, transfers certain functions of the following Office to the Secretary of Agriculture:

1	Officer	Date of Creation	Manner of Creation
	President of the United	(C)	
	States	Sept. 17, 1787	Const. Art. II Sec. 1.

17. Executive Order 9322 of March 26, 1943, consolidates the following agencies or functions thereof to form the War Food Administration:

Agency	Date of Creation	Manner of Creation
Food Production Adminis- tration	Dec. 5, 1942	Executive Order 9380.
Food Distribution Administration	Dec. 5, 1942	Executive Order 9280.
Commodity Credit Corpora-	1933	48 Stat. 195.
Extension Service	1923	42 Stat. 1289.
Secretary of Agriculture	May 15, 1862	12 Stat. 387 as amended by 25 Stat. 659/
	. 8	

18. Executive Order 9330 of April 16, 1943, transfers to the Office of Price Administration, the War Production Board and the U. S. Civil Service Commission functions of the following agency:

٢.	Agency	Date of Creation	Manner of Creation
	Division of Central Admin- istrative Services of the Office for Emergency		_
	Management	Feb. 28, 1941	Letter of President to Liaison Officer, Office for Emergency Management
19.	Executive Order 9332 of Aprenty and funds of the followfor War:	ril 19, 1043 transfe wing agency to the	ers personnel, records, prop- Solid Fuels Administration
-	Office of Solid Fuels Coordination for National Defense		
20.	Executive Order 9338 of Ap Administrator all function	ril 29, 1943, trans s of the following	fers to the Federal Security agency.
	Office of Defense, Health and Welfare Services	Sept. 3, 1941	Executive Order 8890.
21.	Executive Order 9339 of Apr the following agencies or fo		rs to the Department of Was
	Ci Air Patrol	May 20, 1941	Executive Order 8757, a amended by Executive Order 9134.
	Office of Civilian Defense	May 20, 1941	Executive Order 8757, a amended by Executive Orders 8799, 8822 and 9134.
22.	Executive Order 9357 of Jun ministrator all functions of		
	Public Works Administra-	June 16, 1933	48 Stat. 200.
23.	Executive Order 9361 of Jul Warfare the following age		
	Board of Economic War- fare	July 30, 1941	
, 17.			amended by Executive Order 8982.

		26.00			
	United States Commercial	Date	f Crea	tion	Manner of Creation
	. Co.	Mar.	27, 1	942	As subsidiary of R. F. C.
	Rubber Development Corp.	Feb.	20, 1	943	Announced by Secretary of Commerce.
	Petroleum Reserve Corp	June	30, 1	943	Established by order of R. F. C.
	Export-Import Bank	Feb.	2, 1	934	Executive Order 6581, pursuant to 48 Stat. 195, as amended.
	Executive Order 9380 of Sepagencies:	ptembe	r 25,	1943,	consolidates the following
	Office of Lend-Lease Administration	Oct.	28, 1	941	Executive Order 8926.
	Office of Foreign Relief and Rehabilitation Operations	Nov.	21, 1	942	Announced by the White House.
	Office of Economic Warfare	July	15, 1	943	Executive Order 9361; organized to take over functions of Board of Economic Warfare created by Executive Order 8839 of July 30, 1941, as amended by Executive Order 8982 of December 17, 1941.
	Office of Foreign Economic Coordination	June	24.1	943	State Department Order.
i.	Executive Order 9385 of Octo Administration functions of				
	War Food Administration	Mar.	26, 1	943	Executive Order 9322.
	Commodity Credit Corp	Oct,	16, 1	933	Executive Order 6340, pursuant to 48 Stat. 195,
ì,	Executive Order 9406 of Dec the War Production Board,	ember functi	17, 19 ons of	43, tre	ansfers to the Chairman of, llowing offices:
	Secretary of War	Aug.	7, 1	1789	1 Stat. 49.
	Secretary of the Navy.	Apr.	30, 1	1798	1 Stat. 653.
	Executive Order 9421 of Febr Interior all functions of the	uary 1	6, 194 wing a	4, transgency :	sfers to the Secretary of the
	War Relocation Authority	Mar.	18,	1942	Executive Order 9102.

28. Executive Order 9475 of September 7, 1944, transfers all functions of the following agency to the W. P. B. and to the Rubber Reserve Company:

Agency Date of Creation Manner of Creation Office of Rubber Director 18, 1941 Executive Order 9246. Dec.

- Executive Order 9541 of April 20, 1945, transfers the following agency to the Department of Commerce:
 - Office of Surplus Property of the Procurement Division of the Department of the Treasury

June 10, 1933 As part of the Procure ment Division estab lished by Executive Order 6166 under authority of 47 Stat. 1517.

30. Executive Order 9577 of June 30, 1945, transfers to the Secretary of Agr. culture all functions of the following agency:

Mar. 26, 1943 Executive Order. 9322. War Food Administration.

- Executive Order 9608 of August 31, 1945, transfers to the Interim Internal tional Information Service, State Department and Bureau of the Budget all functions of the following agencies:
 - Office of War Information. June 13, 1942 Executive Order 9182.

July 30, 1941

Office of Inter - American Affairs

Executive Order 8840. Re named by Executive Or der 9532 of March 2 1945.

32. Executive Order 9620 of September 21, 1945, transfers to the Office of War Mobilization and Reconversion the functions of the following agencies:

Office of Economic Stabilization

Oet. 3, 1942 Executive Order 9250.

- 33. Executive Order 9621 of September 21, 1945, transfers to the State Depart ment and to the War Department all functions of the following agency: Military Order.
 - Office of Strategic Services June 13, 1942
- Executive Order 9630 of September 27, 1945, as amended by Executive Order 9730 of May 27, 1946, transfers to the State Department, the De partment of Commerce, the Department of Agriculture and the R. F. C. the following agencies or functions thereof:

x 5		3		
Agency	Date	f Cr	eation	Manner of Creation
Foreign Economic Admin- istration	Sept.	25,	1943 -	Executive Order 9380.
Rubber Development Corporation	Feb.	20,	1943	Announced by Secretary of Commerces
Petroleum Reserve Corporation	June	30,	1943	Established by R. F. C.
U. S. Commercial Company	Mar.	27,	1942	As subsidiary of R. F. C.
Army - Navy Liquidation Commissioner	Jan.	27,	1945	War Department Memo. No. 850-45; letter of Secretary of the Navy dated February 1, 1945.
War Department	Aug.	7,	1789	1 Stat. 49.
Navy Department	Apr.	30,	17,98	1 Stat. 553.
Executive Order 9638 of Octo				
War Production Board	Jan.	16,	1942	Executive Order 9024.

36. Executive Order 9699 of February 25, 1946, reestablishes the Office of Economic Stabilization and transfers back to it all functions designated in Executive Order 9620 (supra).

37. Executive Order 2762 of July 26, 1946, retransfers to the Office of War Mobilization and Reconversion the functions of the following agency:

Office of Economic Stabilization Oct.

35.

3, 1942 Executive Order 9250. Restablished February 25, 1946, by Executive Order 9699 (supra).